

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**September 25, 2014**  
**San Diego, California**

**I. PUBLIC MEETING****A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., September 25, 2014, in Room 310 of the County Administration Center, San Diego, California.

**ATTENDANCE****Board Members Present**

Dave Thomas  
David Harrison  
Bill Jackson  
Hank McDermott  
Barbara Smisko  
Laura Stock  
Patty Quinlan

**Board Member Absent****Board Staff**

Marley Hart, Executive Officer  
Mike Manieri,  
Principal Safety Engineer  
David Beales, Legal Counsel  
David Kernazitskas,  
Senior Safety Engineer  
Sarah Money, Executive Assistant

**Division of Occupational Safety and Health**

Amy Martin, Chief Counsel

**Others Present**

Ben W. Lavery III, CSTC KCFB  
Rudy Avila, Jaguar FLC  
Terry Thedell, SDG&E  
Maribel Nenna Grower, CCH Citrus  
Michael Kelley, Central California Almond  
Growers Association

Guy Bjerke, Western State Petroleum  
Association  
Peter Kuchinsky II, ACWA/JPIA  
John S. Gless, Gless Ranch Citrus Farming  
Marti Fisher, CalChamber  
Bruce Wick, CALPASC

Kevin Bland, Esq, Ogletree, Deakins, Nash,  
Smoak, & Stewart, P.C.

Peter Tateishi, Sacramento Regional Builders  
Exchange

Cait Casey, Aspen

Bill Taylor, PASMA

Thomas F. Gibson, City of San Diego, Parks  
and Recreation Department

Larry Pena, So. Cal. Edison

Bruce Gzane, Cal Fire

Tim Schmelzer, Wine Institute

Noe Cisneros, Bravo AG

Jay Vicory, USDOL-OSHA

Nephi Hancock, IBEW LU 569

Jim McKeown, ATT

Chris Walker, Cal SMACNA

Daniel Bustos, CLSR

Victor A. Esparza, IUOE Local 12

Philip Jaeger, Southwest Airlines

Jose Cantu, J.G. Boswell Co.

Roxie Pickett, City of San Diego

Lorena Martinez, CRLAF

Art Franco, Communications Workers of  
America Local 9509

Dan Gremand, California Resources Corp.

Laura Brown, Calif. Citrus Mutual

Samuel Mascarenas, Mid-Valley Labor  
Services, Inc.

Steve Johnson, Assoc. Roofing Contractors

Mark Stone, EPIC Insurance Brokers

Aimee Bncoly, CCGGA/WAPA

George Rodriguez, CCGGA/WAPA

Manuel Cunha, Jr., Nisei Farmers League

Dave Duncan, MD, Cal Fire

Lupe Sandoval, Calif. FLC Association

Robert De La Torre, County of SD, DPW

James Mackenzie, So. Cal. Edison

Joel Sherman, Grimmway

Jason Resnick, WGA

Jeff Stacy, Rainbow Municipal Water Dist.

Jessica Martinez, National COSH

Larry D. Williams, Hall Management

Ryan O'Connor, Southwest Airlines

Michael Perez, Farming

Mark McGrath, AIDS Healthcare Foundation

Larry Bishop, L. Bishop Safety

Abraham Pichardo, Loss Prev. Specialist

Greg Colgate, New Era Tile

Matthew Allen, Western Growers Assoc.

Clark Peterson, Skanska USA Civil

Elizabeth Treanor, PRR

Nicole Galicia, SDG&E

Barry Bedwell, CFFA

Morena Tumiati, CalTrans

Coil Dunn, So. Ca. Edison

Monte Bridgewater, AGC-CAL

Dan Leacox, Greenberg Traurig

Bryan Little, CFBF

Kenneth Sisneros, County of SD

Russ McCrary, CIEC/DCIW

Dick Roberts, Cal-OSHA

John Hakel, AGC of CA

Jake Eddy, DPR Construction

Robert Harris, CWA Local 9588

Virginia Siegel, On-site Safety and Health

Matt Antonucci, CSATF

Anne Katten, CRLAF

Jennifer Bonilla, CRLAF

Carlos Maldonado, CRLAF

Ron Mann, Mann vs. Pest, Inc.

Andrew Hannigan, Mann vs. Pest, Inc.

Dan Ortiz, CSEA

Amalia Neidhardt, DOSH

Oscar Witrado, Mid-Valley Labor Services,  
Inc.

Christopher Lee, United Contractors

Troy Schofield, SMACNA

Roger Isom, CCGGA/WAPA

Felicia Gomez, CIPC

Dave Teter, Cal Fire

Douglas M. Ferro, Cal Fire

Sal Arriola, Bronco Wine Co.

Randy McBurnett, Transportation LA  
County

Ashley Setoudeh, Nossaman for Cal  
SMACNA

Karl Shipley, DPR Construction

Linda Delp, UCLA LOSH

Patricia Mazza, Southwest Airlines

Chuck Herrin, Sunrise Farm Labor

Jose Gonzales, FIOB

Carlos Ramirez, Solar City

Sherri Andrews, ASM Affiliates, Inc.

Yaa Asantewa, UPS/Teamsters

Teddi Penewell, M.R.S. OSHA Safety, Inc.      Deborah Moser, City of San Diego  
Gail Bateson, Worksafe

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:05 a.m.

**II. BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 10:05 a.m., September 25, 2014, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales recommended that case number 14-V-196 be removed from the consent calendar and voted on separately because Ms. Smisko works for Kaiser and will abstain from voting on the case.

Ms. Smisko left the room.

Mr. Beales recommended that the Board grant the variance decision for 14-V-196.

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Stock to grant the variance decision for 14-V-196.

A roll call was taken, and all members present voted "aye." The motion passed.

Ms. Smisko returned to the room.

Mr. Beales recommended that the Board adopt the other variance decisions listed on the consent calendar.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock to adopt the consent calendar as modified.



structure to meet this provision might pose a fire risk or danger to the employee, such as when someone is working on transmission lines on the side of the highway. She said that her organization also supports the high heat procedures listed in the proposal, but encouraged the Board to replace the term “effective communication” with the term “readily understandable communication” because it is clearer and employers are more familiar with it. She recommended that the term “monitoring” listed in subsections (d)(4) and (e)(2) be replaced with the term “observation”. She said that employers interpret the term “monitoring” to mean that medical monitoring must be provided, which would require them to have staff on site that have medical training. She said that employers are more familiar with the term “observation”, and it will cause less confusion. She also recommended that subsection (g) be deleted because it lacks clarity, will create confusion, and will be difficult for the Division to enforce. She also recommended deleting the term “high heat areas” because it is unclear and not defined. She said that in the written comments that her organization sent in, they provided better language for the Board to use. She said that her organization is also concerned about the phrase that states: “The supervisor shall take immediate action commensurate with the severity of the illness”. She stated that supervisors are not going to be able to tell how severe the illness is just by looking at the employee because they are not trained for that. She recommended that the Board delete that phrase and simply require the employer to implement their emergency procedures in those situations. She also asked the Division to make the studies and data that they relied upon available for stakeholders to review.

The following individuals echoed Ms. Treanor’s comments:

- **Terry Thedell, San Diego Gas and Electric**
- **Ben W. Laverty, III, CSTC KCFB**
- **Larry Pena, Southern CA Edison**

**John Gless, Gless Ranch Citrus Farming**, stated that this proposal is attempting to fix something that is not broken. He said that he is opposed to the mandatory break requirements and distance requirements for shade and water. He stated that the agriculture-only requirement for breaks is not only unfounded, but inflicts a greater challenge on the employee. He said that supervisors constantly remind their workers to take breaks as required by the current heat illness standard, but piece rate employees are paid by the number of bins of fruit that they pick, and they do not want to be told when to take a break. He also stated that most of his groves are 1,320 feet in size and are hedge-like. Therefore, he does not have room to put water and shade in the middle of the narrow rows. He said that water and shade are currently located at the end of the rows and are easily accessible, and employees know where they are located. He said that constant moving of shade and water to the proximity of employees would be impossible to communicate, difficult to execute, and difficult for employees to access.

**Michael Kelley, Central CA Almond Growers Association**, stated that in order to comply with the proposal, his organization would have to hire additional employees to monitor all of the water stations. He said that there is no definition for the term “coolness” in the standard, which creates a trap that could get employers in trouble. He stated that he is not aware of any instances that have occurred since the last update to the standard that prove a change to the current standard is necessary, and asked the Division to provide information if there has been one. He also said that lowering the mandates from 95 degrees to 85 degrees is impractical and cumbersome to employers. He urged the Board to keep the current standard as it is.

**Maribel Nenna, CCH Citrus**, stated that complying with the distance requirements for shade and water is impossible without placing them directly in the middle of the citrus grove because they would not fit in the middle of the row. She said that this will make it difficult for employees to access the shade and water because employees would have to walk between the hedge-like groves to get there. This may require them to walk under ladders, across rows where forklifts are being used to transport bins, or encounter other dangerous situations to access the shade and water. She said that having access to water and shade at the end of the row is ideal in order to keep employees safe. She stated that if the shade structure is in the middle of the field instead of at the end of the row, and an injured or sick employee went there to get emergency help, it would be very difficult for paramedics and first responders to reach them in the middle of the field. She also stated that the ag-only requirement for mandatory breaks is unnecessary because employees know that they are allowed to take breaks whenever necessary.

**Laura Brown, CA Citrus Mutual**, stated that her organization opposes the ag-only rule that implements mandatory breaks because there is no evidence to prove that it is necessary, and there is no reason to have it single out agriculture. Her organization also opposes the required distances for water and shade. She said that although there is an exception to this requirement that allows employers to demonstrate when they are not able to comply with this requirement, she is worried that this will leave too much room for interpretation on the part of the inspector, and this unclear regulation will lead to countless appeals. She asked the Board to consider the unintended consequences that will arise as a result of this proposal being implemented.

**Guadalupe Sandoval, CA Farm Labor Contractors Association**, stated that a new standard for heat illness prevention is not needed and will be make enforcement by the Division more difficult. He said that employers have embraced and implemented the current standard, and as a result, the fatality rate for heat illness has decreased, and reported serious injuries can be mediated against with proper treatment. He stated that the current heat illness prevention standard is enough and needs to be properly enforced by the Division.

**Felicia Gomez, California Immigrant Policy Center**, stated that her organization supports the proposed language that requires employers to provide fresh, pure, and suitably cool drinking water free of charge to their employees. She also stated that her organization supports the provision that requires employers to place the water as close as practicable to where employees are working, as well as the provision that provides a maximum distance to which employees must walk to access the water. She said that they also support the provisions in the proposal regarding access to shade, paid rest breaks, and emergency medical care. She also asked the Board to come up with an indoor heat illness standard to address indoor heat illness issues too.

**Juvena Reyes, farm worker in Coachella Valley**, stated that he suffered a heat illness episode 2 months ago, and at that time, no shade was provided. He said that there are times where the foremen provide only 1 or 2 chairs for the employees to rest in. He stated that it is possible for employers to provide shade close to the workers and that there should be enough shade and chairs provided to accommodate all of the workers.

**Brenna Reyes, farm worker in Coachella Valley**, stated that there are times when her employer runs out of water for the workers, and it can take them 20 minutes or more to

replenish it. She also stated that the water provided does not always taste good. She also asked the Board to consider adding a provision to have employers provide indoor shade areas if it is possible for them to provide that.

The following individuals also commented in support of the proposal:

- **Katia Rodriguez, Interfaith Community Services**
- **Sepiano Capistran, farm worker**
- **Saul Reyes, farm worker**
- **Jose Gonzales, FIOB**
- **Erica Navarette, UFW**
- **Helio Delgadillo, CWA Local 9509**

**Peter Kuchinsky, ACWA/JPIA**, stated that the current heat illness prevention standard is adequate, and no changes are necessary. He asked the Division if there is data or experience related to specific industries or exposures versus general industry, specifically regarding public utilities and agencies. He said that if the data or experience shows that heat illness injuries or fatalities are related to specific industries, then it may be more effective to impose additional standards related to those specific industries, rather than to apply additional standards across all industries. He recommended that the Division impose host employer or multi-employer standards for heat illness prevention. He said that host employer and multi-employer standards have been effective in areas such as lockout-tagout, process safety management, confined space injury, and others by imposing general supervisory responsibilities on host employer and multi-employer worksites, and he feels this will work just as well for heat illness prevention.

**Manuel Cunha, Nisei Farmers League**, stated that in various meetings with the Division, his organization asked the Division to show them the data that indicates that there are problems with the current heat illness standard, but the Division never showed them the data. **Barry Bedwell, CA Fresh Fruit Association**, echoed this comment. He said that in the fields, there is no way to place an 8-by-10-foot shade structure in the middle of the vineyard, and workers cannot get to it in the middle of the vineyard because the vines are in the way. He also stated that it is impossible to provide shade for 100% of the workers. **Chris Walker, CA Association of Sheet Metal and Air Conditioning Contractors**, echoed this comment. Mr. Cunha said that there is no shade structure big enough to do that and that will withstand strong wind gusts. He stated that placing water and shade at the end of the rows is no problem, and everyone is trained on heat illness prevention. He also stated that when an ambulance is called for a sick worker, employees use flags on the ends of the rows to direct emergency personnel to the location of the sick worker.

**Ms. Quinlan** asked Mr. Cunha if the provision stating “unless the employer can demonstrate that conditions prohibit locating the drinking water within the prescribed distance” would solve the problem. **Mr. Cunha** stated that it will not solve the problem, because it will make growers have to submit proof in each individual circumstance as to why they cannot comply, and the person from the Division who is making the determination may not understand how agriculture works.

**George Rodriguez, CCGGA/WAPA**, stated that placing water in the middle of the grape vineyards will be too difficult for his organization to do, and there is no way for employees to cross the rows to access it if it is in the middle of the vineyard. He said that he has seen workers try to cross the rows, and some have tripped over irrigation systems or other objects and injured themselves trying to cross the rows to access the water. He stated that his organization keeps plenty of water and shade on the ends of the rows to keep employees safe. He said that employees are trained in heat illness prevention, are reminded constantly to drink water, and work in pairs to monitor each other for signs of heat illness.

**Ms. Stock** asked Mr. Rodriguez how long the rows are. **Mr. Rodriguez** stated that the rows are each  $\frac{1}{4}$  mile long.

**Barry Bedwell, CA Fresh Fruit Association**, stated that in the last 5 years, there has been only one confirmed heat illness-related fatality. He said that the current heat illness prevention standard is working just fine, and the proposed standard will only lead to more non-compliance. He stated that all the Division needs to do is review the current standard and correct the issues that are not working.

**Marti Fisher, Cal Chamber of Commerce, also representing the Heat Illness Prevention Coalition**, stated that her organization submitted written comments [Please see the Board's file copy to view this letter]. She said that the current heat illness prevention standard is effective, and any changes made to it must be properly justified. She stated that the proposal was not collaborative with the employer community. She stated that the Division held 2 advisory committees on this issue, but did not present any proposals during either meeting, nor did they provide data to prove that changes are needed. She said the Division did not reach out to employers to get their input on problems with the current standard and discuss solutions. She also said that they repeatedly requested to see the data from the Division to prove that changes to the current standard are necessary, but the Division was unresponsive to their concerns. She stated that this is the first opportunity that her organization has been given to provide feedback. She said that the proposed changes are far-reaching and overly prescriptive, which goes against state mandates that state regulations shall be performance-based when they can be expected to be at least as effective, and less burdensome, as prescriptive standards. She also said that it does not follow the APA requirement that requires necessity to be established. She stated that the proposal is very complex, lacks clarity, and creates challenges and obstacles for employers to comply, which will lead to numerous citations and penalties on employers who are making a good faith effort to comply, and it will diminish employee protections. She stated that there are many confusing provisions in the proposal, which they pointed out in their letter, and one example that she pointed out was in regards to the temperature triggers:

- There are 5 different temperature triggers in the proposal, which will be very difficult for employers to navigate.
- The proposal lowers the current shade temperature trigger from 85 degrees to 80 degrees, and no demonstration of necessity was given by the Division for this change.
- The proposal lowers the high heat procedures trigger from 95 degrees to 85 degrees for the industries noted in the scope and application. She said that this is only 5 degrees

higher than the shade temperature trigger, and the Division has not demonstrated that 85 degrees is considered to be high heat.

- The proposed written procedures that require close supervision of employees when the predicted high temperature is 80 degrees or more, and the average temperature in the preceding 5 days was at least 10 degrees below that predicted high is very confusing. Furthermore, the high heat provision applies to all industries, and when it is placed in the written procedures, it applies to everyone, not just the industries that are subject to the high heat noted in the scope and application, which is also confusing.
- The provision that applies a 95 degree temperature trigger only to agriculture is confusing, and the reasons why are outlined in their letter.
- The provision that requires employers to closely supervise employees newly assigned to high heat areas is unclear because the term 'high heat area' is not clearly defined.

Ms. Fisher also stated that her organization is concerned about the definition for water being fresh, pure, and suitably cool, because it is undefined and unclear. **Linda Delp, UCLA LOSH**, echoed this comment. Ms. Fisher said that the current standard uses the term 'potable', which means that the water is suitable for drinking, which is very easy to understand.

Ms. Fisher asked the Board to send the proposal back to the Division for further review, and she asked the Division to demonstrate necessity for changes in the current heat illness standard, establish clarity, and do so in a collaborative manner.

The following individuals echoed Ms. Fisher's comments:

- **Chris Walker, CA Association of Sheet Metal and Air Conditioning Contractors**
- **Guy Bjerke, Western States Petroleum Association**
- **Monte Bridgewater, Hensel Phelps and AGC**
- **Bryan Little, CA Farm Bureau Federation**
- **Peter Tateishi, Sacramento Regional Builders Exchange**
- **John Robinson, CAPA**
- **Dan Leacox, Greenberg Traurig, representing the CA Solar Energy Industries Association**
- **Tim Schmelzer, Wine Institute**
- **Bill Taylor, PASMA**
- **Kevin Bland, representing the Western Steel Council, CA Framing Contractors Association, and the Residential Contractors Association**

**Greg Colgate, New Era Ancient Art, Tile, and Stone**, echoed Ms. Fisher's comments. He said that this proposal will impose significant costs for small businesses. He stated that employers and employees will be better served by providing thoughtful and targeted enforcement of the existing regulations, rather than adding more regulation to an already-effective program.

Mr. Thomas called for a break at 11:55 a.m. and reconvened the meeting at 12:15 P.M.

**Yaa Asantewa, UPS**, stated that employees at her organization work 9.5 to 12-hour shifts in the heat. She said that the trucks have no air conditioning, and even when the doors to the cargo area are open, the temperature inside the cargo area can be 20 degrees hotter than the outdoor temperature because there is little or no ventilation in the cargo section. She stated that her organization does educate their employees on heat illness prevention, and when an employee experiences symptoms of heat illness, they are told to cool off and rest in the shade. She said that her organization documents all other injuries and illnesses that occur on the job and sends employees to the company doctor for treatment, but this is not done for employees experiencing heat illness symptoms. She stated that this proposal will help to protect drivers from heat illness by requiring employers to educate their workers on heat illness prevention, but it does need some improvements. She said that the proposal needs to state when it is okay for an employee to simply rest in the shade when experiencing heat illness symptoms, and when further action needs to be taken by the employer to help the employee experiencing heat illness symptoms. She said that resting in the shade helps to prevent heat illness, but once someone is experiencing heat illness symptoms, they need more help. She also said that the standard needs to require employers with unique situations, such as employees driving a delivery truck to remote locations, to address in their heat illness prevention plans how the employee is to communicate to them that they are experiencing heat illness symptoms, how employees can access water, shade, and first aid, and should require proper ventilation in the cargo area of the truck. She also stated that all outdoor workers, including delivery drivers, should be covered by section (e), and it is unclear in the proposal if delivery drivers are covered under the description of the transportation sector.

**Jose Cantu, J.G. Boswell Company**, stated that the current standard works very well when it is followed and does not need to be changed. He said that if employers are not complying, people need to report them so that the Division can take action against them. The following individuals echoed those comments:

- **Clark Peterson, Skanska and AGC**
- **Monte Bridgewater, Hensel Phelps and AGC**
- **Chuck Herrin, Sunrise Farm Labor**
- **Victor Esparza, IUOE Local 12**
- **Troy Schofield, Excel Mechanical Systems**
- **Matthew Allen, Western Growers Association**
- **Bill Taylor, PASMA**

Mr. Cantu also stated that the proposal lacks clarity and data needs to be provided to justify the changes that were made. He said that the change in the high heat temperature trigger to 85 degrees does not make sense.

**Chris Walker, CA Association of Sheet Metal and Air Conditioning Contractors**, asked why there is a need for linear limits on access to water and shade. He said that in section 3395(b), the phrase 'does not discourage access' is unclear. **Linda Delp, UCLA LOSH**, echoed this comment. Mr. Walker asked the Division to clarify what may discourage access to shade. He stated that there are situations in the construction industry where providing water

and shade within the prescribed distances is not always possible, and requiring the employer to demonstrate why it is not possible can be burdensome to the employer. He said that some construction sites are very dynamic and constantly change. **Clark Peterson, Skanska and AGC, and Christopher Lee, UCON**, echoed this comment. At one moment, it may be safe to place shade and water within the prescribed distances, but at the next moment, the site may change, and it may no longer be safe to place shade and water within the prescribed distances. He stated that it is unclear in the proposal how employers would be able to demonstrate that it is not possible to provide water and shade within the prescribed distances, and if citations are issued, who would be held responsible in situations such as those encountered at construction sites where there are multiple people in charge of the site? He also stated that section (f)(1)(D) regarding acclimatization, it is unclear what the employer's role is. He asked the Board to reject the proposal and direct the Division to demonstrate the necessity for any changes made to the current standard, work with stakeholders to arrive at better proposed changes that address issues with the current standard, and bring back a proposal that is clear and easy for employers to comply with. **Troy Schofield, Excel Mechanical Systems**, echoed this comment.

**Guy Bjerke, Western States Petroleum Association**, stated that in the proposal, a distinction needs to be made between mobile field work and fixed facility work because they are two different environments, and the distinction between the two will impact how water and shade can be provided at each type of location. He said that the provision requiring water to be within 400 feet of employees at all times would create a compliance issue in fixed facilities because plant operators walk around the facility doing daily operator rounds. He stated that it is not practical to keep plant operators within 400 feet of the water and would also create additional workplace hazards. He said that if the Board chooses to keep this provision in the regulation, an exception should be included for employees walking around to perform their duties inside a fixed facility. He also stated that the provision requiring employers to provide shade for 100% of employees who are on break would be nearly impossible to do. He said that staggering break times is not always possible and facilities do not always have enough space to provide this much shade. He recommended adding the phrase "where feasible" into the amount of shade required during breaks, which would mirror the feasibility exception proposed in the provision requiring that shade be located within 700 feet of where employees are working.

**Lorena Martinez, CRLAF**, stated that the reason that there is not a lot of data regarding heat illness is because a lot of workers who experience heat illness are sent home and do not go to the doctor or get medical attention because they cannot afford it or are afraid that they will lose their job if they report it. She said that a 700-foot walking distance to access shade is too far away from the worker. She said that employees often work 8-12 hour shifts in the heat while in the fields and are under a lot of pressure from their employers to harvest enough crops to meet the employer's daily quota for them, and if the water and shade are not close by, they will not take advantage of them because it takes too long to access them, resulting in them being less productive and possibly losing their job. She stated that the ends of the rows can be 600 – 1,200 feet away from the workers, and if the water and shade are at the ends of the rows, it is too hard for tired workers to access them. She said that she has seen companies provide shade closer to their employees than 700 feet, and she has also seen companies provide water under an umbrella both in the middle of the fields and at the end of the row. She also asked that when the Division and Board staff consider the temperatures mentioned in the

proposal, that they factor in how humidity affects heat too. **Aida Sotelo, UFW**, echoed Ms. Martinez's comments.

**Deborah Moser, City of San Diego, Risk Management Department**, stated that her organization supports Bill Taylor's comments submitted to the Board in his letter for PASMA [Please see the Board's file copy to view this letter], especially his comments regarding the fact that there is no data that shows necessity for the changes made to the heat illness prevention standard. She said that there are low-cost solutions that can be implemented to keep employees cool and place water near where they are working and that there are products and personal protective equipment available to address these issues. She said that there needs to be discussion about how to use personal protective equipment in addition to shade and water to keep employees cool.

**Art Franco, Communications Workers of America Local 9509**, stated that his organization supports the proposal. They feel that the 85 degree high heat temperature trigger is a great idea. He said that they would like to be considered as part of section (e), especially part 6 of section (e) and that they would like to see a provision added to the proposal to allow employees time to acclimate.

**Robert Harris, CWA Local 9588**, stated that his organization supports most of the proposal. He said that his organization agrees with the provisions that require shade and additional breaks when the temperature hits 80 degrees, but they feel that it does not go far enough. He stated that there needs to be a mandated work rest schedule in each provision that requires employees to take a break of at least 10 minutes per hour when temperatures are 85 degrees or higher and employees are doing strenuous work or wearing personal protective equipment, and for other employees, when temperatures are 90 degrees or higher. It should not be left up to the employees. He also stated that the provisions in section (e) should apply to all industries, not just the ones listed. He said that only 2 of the 5 industries listed in section (e) are clearly spelled out, and it is unclear if telecommunication workers are covered under section (e). He said that the provision in section (e) should be based on the high heat hazard itself, not the industry that someone works in. He also stated that his organization supports the provision requiring that employers provide water that is fresh, pure, suitably cool, and free of charge to the employee. **Anne Katten, CRLAF**, echoed this comment. Mr. Harris said that requiring water to simply be potable is too low of a standard, and if water does not taste good, employees will not drink it. **Linda Delp, UCLA LOSH**, echoed this comment. Mr. Harris also asked that all of the provisions in the proposal be applied to indoor heat situations.

**Roger Isom, CA Cotton Ginners and Growers Associations and Western Agricultural Processors Association**, stated that it seems that the main problem is not the distance in which water and shade must be placed, but with employers not following the current standard. He said that the proposal will not help make these employers comply, and no data has been provided that proves that these changes are necessary. He stated that placing water within 400 feet, and shade within 700 feet, of where employees are working is possible, but it is not practical or feasible to do so. **Bryan Little, CA Farm Bureau Federation**, echoed this comment. Mr. Isom also said that the exception that allows employers to demonstrate why they are unable to comply creates a situation where the employer has to go through an appeal process to prove that he cannot comply, which is subjective rather than objective. He also stated that the provision adding another break during periods where temperatures are 95

degrees or higher will be burdensome and will not provide employees with any additional protection from heat illness. He said that it will require supervisors to carry thermometers with them to keep track of the current temperature so they will know when the temperature reaches 95 degrees or higher, as well as extra time sheets to ensure that employees take that extra break.

**Bryan Little, CA Farm Bureau Federation**, stated that the Division has not met its legal burden that requires them to prove that the proposed changes are necessary. He said that using the terms ‘cool down break’ and ‘recovery break’ interchangeably throughout the proposal will cause confusion for employers because it is unclear what they will be legally required to do in order to comply. **Christopher Lee, UCON**, echoed this comment. Mr. Little stated that the provision requiring a 10 minute break every 2 hours for employees when the temperature is 95 degrees or higher is appreciated, but there are some problems because employers do not know when the temperature will hit 95 degrees or higher, and in order to prove that employees took the extra break, employers will have to keep records of when employees take it. He also stated that the provision requiring employers to provide shade for 100% of employees that are on break is impractical. He said that employers may not have enough space to do that, and even if they do, employees may decide to take their breaks elsewhere, which will leave the shade area unused.

**Jennifer Bonilla, CRLAF**, stated that the current standard needs to be strengthened, and that the distance requirements for water and shade in the proposal are better than those in the current standard, but her organization believes that they can still be placed even closer to where the employees are working. She stated that her organization submitted a letter to the Board, and in the letter, they recommended a closer distance [Please see the Board’s file copy to view this letter]. She also stated that data regarding heat illness does not exist because many workers do not report it. She said that medical conditions such as a heart attack may not be considered heat-related, but heat and working conditions may be a contributing factor when they happen.

**Mr. McDermott** stated that action needs to be taken against employers who are not complying with the current standard, and more regulations will not make things better. He said that the Division needs to present the information to the public and the Board that shows that a change to the current standard is necessary, especially in areas where employers are in compliance, but a health risk is still present. He said that when Division inspectors find a big gap in a regulation, there is a form that the Division can fill out and a process that it can go through to address it, but this is missing in the Division’s presentation of the proposal. He also stated that there are some gaps in the current standard that need to be addressed and areas that need to be clarified and tightened up. **Troy Schofield, Excel Mechanical Systems**, echoed Mr. McDermott’s comments.

**Peter Tateishi, Sacramento Regional Builders Exchange**, stated that it is unclear how the exception for shade and water will be implemented. He asked if the demonstration portion of the exception will have to be done by the employer before or after they follow the exception. He said that there are unique situations in construction regarding scaffolding, and adding water and shade to scaffolding creates other safety hazards. He stated that this proposal appears to have a one-size-fits-all approach with exceptions, and he is not sure that will work for all industries. **Troy Schofield, Excel Mechanical Systems**, echoed this comment.

**Ben W. Lavery, III, CSTC KCFB**, stated that the proposal needs to take into consideration how humidity plays a factor in high heat. He said that lowering the high heat temperature trigger from 95 degrees to 85 degrees is a big jump. He also stated that he wants to see the data from the Division to justify that changes need to be made to the current standard. **Christopher Lee, UCON**, echoed this comment.

**Joel Sherman, Grimmway Farms**, stated that there is no explanation why this proposal is necessary, and it is very confusing. **Bruce Wick, CALPASC, and Matthew Allen, Western Growers Association**, echoed this comment. Mr. Sherman said that one of the items his organization is concerned about is the provision requiring increased supervision during high heat. He said that it is unclear where supervisors are supposed to go when employees under their watch are experiencing heat illness symptoms. Are they required to stay and supervise the other employees under their care, or do they go to the shade with the employee to provide additional supervision and monitoring? He said that this provision may require his organization to hire an additional person to remain in the shade area at all times waiting for an employee to experience heat illness symptoms and come in the shade so that they can provide the increased supervision and monitoring that this proposal requires. **Rudy Avila, Jaguar FLC**, echoed this comment. Mr. Sherman also said that it is unclear at what temperatures this will be required to be done. He said that the current standard works very well, and with only 75-80% of employers complying with the current standard, it is not a good time to increase regulation. He stated that the Division and stakeholders should come together and come up with creative ways to catch employers who are not complying with the current standard. **Bruce Wick, CALPASC**, also echoed this comment.

**Anne Katten, CRLAF**, stated that she strongly supports a majority of the proposal, but there are a few areas that need further revision for enforceability and effectiveness:

- She is concerned about the maximum walking distances to shade and water because employers will use them as the default distances for placing water and shade, rather than the maximum that is practicable. **Linda Delp, UCLA LOSH**, echoed this comment. Ms. Katten said that there are many methods, in addition to using large coolers, that employers can use to provide water to their employees, and at a much closer distance than 400 feet, such as canteens or water bottles.
- She recommended adding a provision to require that water and shade be safely accessible.
- Her organization supports the provision requiring that shade ‘must not discourage access’, but it needs to be more specific. She said that her organization provided examples in their letter of how it could be made more specific.
- Her organization supports the provision that requires enough shade be available for 100% of employees on break is much needed, and the temperature trigger for erecting shade should be changed from 85 degrees to 80 degrees. She said that this lower trigger is needed because being in the full sun at 80 degrees can result in a heat index as high as 95 degrees, and this can be compounded for workers who are not acclimatized or have other conditions.

- Her organization would like to see a provision added that requires employers to place water in the shade structures where people take breaks because drinking water during break times is the most convenient for workers.
- Her organization would like to see a provision added that states that the time needed to access the shade area must not be counted as part of the rest time.
- She stated that workers should be monitored during cool down periods for signs of heat illness, and the phrase ‘until symptoms have abated’ should be removed from the proposal because rest in the shade is not adequate enough treatment for heat illness.
- Her organization supports the provision requiring a mandatory recovery period for employees in agriculture, but only having it every 2 hours is not adequate.
- Her organization supports the high heat trigger temperature being lowered from 95 degrees to 85 degrees because it protects unacclimatized employees from heat illness.
- Her organization supports the provision requiring employers to provide emergency medical services to an employee experiencing heat illness symptoms before sending them home, but employers should be required to provide this medical care free of charge to workers through the workers’ compensation program so that employees will be encouraged to get medical care when they are experiencing heat illness symptoms.

**Dan Leacox, Greenberg Traurig, representing the CA Solar Energy Industries Association**, stated that sections (d)(3) and (d)(4) regarding assessment of an employee’s medical condition create tremendous confusion about the nature of a break, and it is unclear if when someone indicates that they need a break, if that should be interpreted to be a symptom of heat illness. **Gail Bateson, Worksafe**, echoed this comment. Mr. Leacox said that the requirements for acclimatization procedures have been expanded, and that computing the formula for acclimatization could be a worker-by-worker chore because workers may have been in various places over the previous 5 days and in different micro climates today. He stated that the acclimatization procedures have been moved out of the high heat procedures and are now in the written procedures, which apply to all industries. He said it is now in the written procedures, but nowhere else, and there is no mention of this expansion in procedures in the Initial Statement of Reasons. He stated that the heat illness prevention standard is very prescriptive, and the proposed changes make it even more prescriptive. **Christopher Lee, UCON**, echoed this comment. Mr. Leacox also said that there are places where there is uncertainty regarding compliance, which will lead to more citations being issued. **Matthew Allen, Western Growers Association**, echoed this comment.

**Christopher Lee, UCON**, stated that the temperature triggers in the proposal overlap each other and will cause confusion for employers who try to comply. He also stated that in section (f)(1)(D), it is unclear whether or not employers are required to acclimatize their employees. He said that if they are required to acclimatize their employees, then the proposal needs to state what types of training are needed in this area, who will determine when an employee has been properly acclimatized, and how acclimatization is to be done. He stated that

acclimatization is a personalized process that is affected by the employee's risk factors, and these risk factors must be considered when discussing the process of acclimatization.

**Matthew Allen, Western Growers Association**, stated that this proposal gives employers 3 options to choose from for providing water and shade:

- As close as practicable to where employees are working
- Not more than 400 feet away for water, and 700 feet away for shade, from where employees are working
- Water can be located more than 400 feet, and shade can be located more than 700 feet, from where employees are working if the employer can demonstrate that locating them within the prescribed distance is not feasible.

He said that this is too broad, and even if employers use their best judgment and pick the option that will work best for them, the Division may deem that they are not in compliance and cite them anyway.

**Dave Duncan, Cal Fire**, stated that he is a subject matter expert regarding heat illness prevention and he is familiar with the evidence regarding heat illness, but he is not familiar with any evidence in the area of firefighting to support the changes being presented in the proposal. He said that this proposal requires lay people to make medical decisions, which is illegal. He stated that these decisions are being made by observing the signs and symptoms of heat illness that an employee is experiencing, as well as acclimatization, and this is not even in the scope for public safety first aid providers, so lay people should not be making these decisions. **Bill Taylor, PASMA**, echoed this comment. Mr. Duncan recommended that the Board and Division staff bring in subject matter experts and medical directors to observe and review these changes before the proposal moves any further along. He also stated that there are as many as 20 characteristics that contribute to heat illness, and all of those factors need to be considered in terms of this proposal.

**Dave Teter, Cal Fire**, stated that there are 3 common themes that he has heard in the testimony given today that also ring true for firefighters regarding this proposal:

- There is a lack of data to justify that changes need to be made to the current heat illness prevention standard.
- Both the current standard and the proposal have areas that are ambiguous, and the ambiguous areas in the current standard have caused them to be cited by the Division.
- The proposal contains a lot of subjective interpretation.

He stated that for firefighters, there will be logistical issues with providing water within 400 feet, and shade within 700 feet, of where employees are working, as well as shade for 100% of the employees. **Bill Taylor, PASMA**, echoed this comment. Mr. Teter said that this proposal will have a significant cause and effect relationship on all general industries, and his organization wants to work with the Division and stakeholders to make the standard better.

**Doug Pharaoh, Cal Fire**, asked the Board to come up with a heat illness prevention standard that is unique to their industry. He stated that unlike other industries, the environments where firefighters work change constantly and are beyond their control. He said that having a standard for their industry that incorporates controlled and uncontrolled environments would be much better for them.

**Gail Bateson, Worksafe, also speaking on behalf of the Southern California Coalition on Occupational Safety and Health**, stated that her organization attended both advisory committees, there was a lot of open discussion, and stakeholders did have an opportunity to weigh in on this proposal prior to today. She asked the Board for an indoor heat illness standard so that all workers are covered. She said that this could be done by either adjusting the scope of the current heat illness standard to include all workers, or in a separate proposal. She said that it is unclear which occupations are considered to be indoors, and which are considered to be outdoors, so this needs to be clarified in the proposal. She stated that the health department and the Division have provided data to justify the changes made to the current heat illness prevention standard, and her organization has provided that data to the Board in their letter [Please see the Board's file copy to view this letter]. She said that heat illness also involves injuries such as burns, skin cancer, and exposure to toxic chemicals that are absorbed into the body due to heat, but there is nothing in the proposal to address and prevent these types of injuries. She stated that this proposal covers the areas in the current standard regarding water, shade, and rest that are very ambiguous, and it also explains what the employer is required to do when an employee is experiencing heat illness symptoms. She said that the current standard regarding temperatures does not address humidity, radiant heat, or wind speed. She also stated that the Division did a good job in the proposal of balancing the need to have water available as close as practicable to where employees are working, but also giving employers an exception if they are not able to provide it within 400 feet. She said that by having water close to the employees, employees will be able to keep cool, it will take less time for them to reach the water, and it will help them be more productive. Her organization also supports lowering the high heat temperature trigger from 95 degrees to 85 degrees, and the high heat provisions listed in the proposal should apply to all industries. She also stated that section (h) in the proposal needs a title.

**Linda Delp, UCLA LOSH**, stated that the scope of the proposal needs to be expanded to look at how heat illness affects all industries, and how the proposal will affect all industries, including those that are not traditionally considered. She said that having water, shade, and breaks available is good, but if workers don't know what their rights are, or if the shade, water, and break areas are not easily accessible, employees will not use them. She stated that this standard calls upon employers and employees to make a judgment call as to when they need a break, and it recommends drinking water every 15 minutes. She said that if employees have to walk 400 feet to get water every 15 minutes, that will cut into their productivity, and if they are piece rate workers, this decrease in productivity will affect their pay. She also stated that the language in section (d)(2) regarding employers not being able to order an employee to go back to work until heat illness symptoms have abated is important because it will protect employees from reprisals or retaliation by supervisors. She recommended adding a provision to section (f) regarding training that states that training needs to be given to employees in a language that they understand, as well as on a literacy and educational level that they understand.

**Rudy Avila, Jaguar FLC**, stated that the temperature triggers for shade need to take into consideration what the time of day it is when that temperature trigger happens. He said that as the proposal stands, it only requires employers to “shade up” based on the current temperature, not the time of day. He also stated that the acclimatization process differs from industry to industry, and the proposal should reflect that. He said that making all the changes that are noted in the proposal will be costly for employers.

Mr. Thomas asked the Board Members for their comments.

**Mr. Harrison** stated that there is a lot of work still left to do. He said that if the exceptions regarding shade and water access, as well as the other exceptions that are in the current standard, are clarified and fine-tuned, this will address a lot of the issues that have been raised today. He encouraged the Division to work with stakeholders to come to a consensus on those and to also address the issues raised regarding necessity for the changes.

**Ms. Stock** stated that she would like to see the Board and Division staff look into heat illness regarding indoor heat situations, as well as outdoor heat. She said that the current proposal seeks to make things clearer and easier to comply with, but more specificity is needed so that it is easier for employers to comply with. She stated that it is very important to have water nearby and available for employees to drink whenever they need it, and she asked the Division to focus very hard on addressing that issue.

**Mr. Jackson** stated that he submitted written comments to the Board about this proposal [Please see the Board’s file copy to view this letter]. He said that he was unable to find a rationale or any evidence in the Initial Statement of Reasons or other supporting documents to prove necessity for this proposal, and the record does not support the changes. He stated that the Division needs to take this proposal back, respond to all of the comments, and then decide if it wants to move forward from there.

**Ms. Quinlan** stated that it appears that the Division did try to be clear and specific in the proposal, and she understands the justification behind the changes. She said that the Division can address this by being more specific and giving more information to stakeholders when responding to comments.

**Ms. Smisko** stated that this issue has had the most written and public speaking comments in the time that she has been a Board member, and there are many different perspectives on this issue. She said that more work is needed to come to a common understanding at the table about how to effectively address this issue.

**Mr. Thomas** stated that the language in this proposal needs to be cleaned up and made more straightforward. He said that the problem appears to be that it is not understandable, but this can be cleared up, and the Division and stakeholders can come to a decent resolution.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 3:50 p.m.